

CHILDREN AND FAMILIES ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – FAMILY JUSTICE

Schedule 2 – Child arrangements orders: amendments

114. *Schedule 2* consists of two Parts, each containing amendments to legislation that relate to section 12 (child arrangements orders) and, in particular, the replacement of the “residence order” and the “contact order” by the child arrangements order. In addition, certain of these amendments reflect a shift in focus in order to achieve a particular policy aim. For those provisions where this is the case, a more detailed explanation is provided below.
115. Many of these amendments are those which replace the words “residence order” or “contact order” with “child arrangements order”. For many of those provisions which previously referred either to residence or contact orders, the distinction remains, but the language now reflects that the order in question will be a specific type of child arrangements order.
116. Whilst the name of the order in question will change, the rights that flow from the order will remain. If, for example, the order provides that a child shall live with a particular person, that person (or others seeking confirmation that the child lives with that person), can rely on that child arrangements order as confirmation that the child should be living with that person, in the same way as was previously the case in relation to a residence order. The content of the order will set out with whom the child is to live. From an international perspective, it is the content of an order rather than the name of the order that is important. A child arrangements order which regulates arrangements about whom the child concerned is to live with will operate in the same way as a residence order does at present. Parental responsibility that results from the making of such an order will remain.

Schedule 2, Part 1: Amendments of the Children Act 1989

117. *Part 1* of Schedule 2 contains the amendments to the Children Act 1989 that relate to section 12 (child arrangements orders). Several amendments to the Children Act 1989 have the aim of replicating, in so far as possible, the current position as regards residence orders and contact orders. However, some amendments have required additional provisions to be inserted into sections in that Act or an alteration to the focus of such sections. This is to ensure that the amendments reflect the policy aim of moving away from terminology that implies that there is a winner or loser in disputes concerning children (the perception often being that the parent with residence is the winner while the parent with contact is the loser). Where more detailed amendments have been required, further explanation is provided below.
118. Of particular note in this regard are the amendments made by *paragraphs 7 to 11* of Schedule 2 which amend sections 11A to 11E of the Children Act 1989. Sections 11A to 11E relate to “contact activity directions”, which are directions that the court is able

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to make where it is considering making provision about contact, and “contact activity conditions”, which can be imposed in a contact order. Contact activity directions and contact activity conditions have the aim of promoting contact. The amendments to sections 11A to 11E mean that the activities directed or imposed are able to relate to more than just promoting the contact provided for in the child arrangements order (or provision about contact which the court is considering). Instead the activities directed or imposed will be about helping to establish, maintain or improve the involvement of a person in a child’s life. As such, these directions and conditions will no longer be referred to as “contact activity directions” or “contact activity conditions”, but will be “activity directions” and “activity conditions”.

119. The shift in focus here is to recognise that where the child lives with more than one person or lives with one person and spends time or otherwise has contact with another person, there may be issues that relate to the time spent by the child with the person with whom he or she lives, that affect the smooth operation of the arrangements for the care of the child. In such circumstances, these issues could be addressed by an activity direction or condition.
120. In addition, various amendments in Schedule 2 mean that the court will be able to make activity directions when it is considering whether a person has failed to comply with a provision of a child arrangements order, or what steps to take in consequence of such a failure, but where the court is not considering whether to vary or revoke the child arrangements order itself. These amendments will ensure that where there is an alleged or actual failure to comply with a child arrangements order, the court can consider whether it would help in resolving any dispute to require one or more of the adults involved to attend an activity such as a parenting information programme.
121. Sections 11F and 11G of the Children Act 1989 are supplementary to sections 11A to 11E. Sections 11H to 11P make provision as to the enforcement of contact orders and the payment of compensation where one person is in breach of an order and the other person suffers financial loss. Amendments made to these sections are to ensure that where a child arrangements order is in force with respect to a child and the provisions setting out the living arrangements (not just arrangements about contact) are sufficiently precise so that it is clear when a person is in breach of the order, the sanctions currently available to the court by virtue of sections 11H to 11P are available for breaches of a child arrangements order by any person who the child is to live with.
122. *Paragraph 21* amends section 12 of the Children Act 1989 and relates to the entitlement to parental responsibility as a result of being named in a child arrangements order. New subsection (1A) gives the court the power to give parental responsibility to the child’s father or second female parent (by virtue of section 43 of the Human Fertilisation and Embryology Act 2008) in cases where the father (or second female parent) is named in the order as a person with whom the child is to spend time or otherwise have contact.
123. New subsection (2A) enables the court to give parental responsibility to a person who is not a child’s parent or guardian, in cases where a child arrangements order provides for the child concerned to spend time with or otherwise have contact (but not live) with that person. As for subsection 12(2), parental responsibility is limited to the duration of the relevant provision.
124. As a result of new section 12(2A) and new section 10(5)(d) the entitlement to apply for a child arrangements order will be extended. New paragraph (d) of section 10(5) of the Children Act 1989 (see *paragraph 5(3)(c)* of Schedule 2) provides that a person who has parental responsibility by virtue of provision under new section 12(2A) is entitled to apply for a child arrangements order. The Government considers that the extension of entitlement that would be effected by new section 10(5)(d) is narrow because there are likely to be only a few cases in which the court considers it appropriate to give parental responsibility to a person with whom a child spends time or otherwise has contact but does not live.

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125. Section 14 of the Children Act 1989, which relates to measures for the enforcement of residence orders under section 63(3) of the Magistrates' Courts Act 1980, is repealed by [paragraph 23](#). No equivalent is needed because the enforcement powers of the family court established by the Crime and Courts Act 2013 are sufficient.

Schedule 2, Part 2 – Child arrangements order – amendments in other legislation

126. [Part 2](#) of Schedule 2 contains amendments to legislation other than the Children Act 1989 that relate to section 12 (child arrangements orders). Many of these amendments replace references to a “residence order” or “contact order” with a references to a “child arrangements order”, and all are made either with the intention of preserving the original policy effect of the legislation concerned, or to reflect the new intentions referred to above (for example, in relation to the ability to make activity directions where there has been an alleged or actual failure to comply with a provision of a child arrangements order).